CHARACTERIZATION OF INTERVENTIONS INVOLVING TOUCHING

Often in the course of analyzing a program that has been presented to the Review Committee (also referred to colloquially as "the three person committee"), questions arise pertaining to various types and kinds of intervention that involve staff touching the client and/or having the client move from one place to another. In an effort to achieve as much consistency as possible in implementing and reviewing plans, this sets out various factors and considerations that can or should be taken into account in distinguishing restraint, physical escort, graduated guidance, and teaching.

It should be noted at the outset that this is a complex area and that there are always going to be gray areas into which a particular plan or intervention may fall. Absolute consistency is probably impossible to achieve. However relative consistency should be possible.

Analysis should always begin with recognition of the basic principle of the regulations governing behavioral treatment (14-197 Chapter 5): that the degree of oversight is directly proportional to the severity and intrusiveness of the program.

At one end of the continuum of interventions is **restraint**. The regulations define "restraint" broadly, as "a mechanism or action that deprives an individual of the use of all or part of the body". (Note that the definition expressly excludes "those devices or actions used for positioning when used correctly.") The regulations also state, in the context of "prohibited interventions" that "Any limitation, whether actual or implied, upon an individual's freedom of movement …. is expressly forbidden unless it is either in response to an emergency, or a formal and approved portion of an individual's treatment plan." (Section 2(3)(C)) Thus almost any interference with a person's movement, either of the body of the person or a part of the body of the person, can be a restraint.

One possible exception is "**blocking**". Blocking is expressly defined by the regulations to be a "momentary deflection of an individual's movement, when that movement would otherwise be destructive or harmful". Technically even the blocking movement of a staff's forearm coming between a client's fist and the staff's chin does deprive the client of the "use of … part of the body" and thus fits the definition of restraint under the regulations. The regulations state that "Blocking used by a staff person to deflect a potentially dangerous movement (e.g., a blow) …. must be reported as an emergency restraint" when it is not part of a behavioral plan. (See section 7(D)(1)) The limitation of movement does not violate the prohibition of Section 2(3)(C) because it is an emergency intervention.

The regulations draw a distinction between blocking in an emergency and blocking used as part of a planned intervention. Section 7(D)(2) states: "Blocking may be used as part of a plan to replace stereotypical, potentially harmful behaviors with preferable substitutes. A planning team may determine that the plan is either moderately

or severely intrusive, subject to the necessary levels of planning team approval and review." (See also the definition of blocking, which states: "Blocking may occur as an emergency intervention, or a moderately or severely intrusive intervention.")

It is as a planned intervention that blocking is an exception to the regulations' definition of restraint. Restraint (any…"action that deprives an individual of the use of …. part of the body") is otherwise always a severely intrusive intervention. (See Section 8(C)). Restraint requires the approval of the Review Committee. But blocking, in and of itself, may be exempt from Review Committee review, and be subject to the scrutiny accorded to moderately intrusive interventions in certain limited circumstances. If the person voluntarily complies with the blocking program, and a member of the Office of Advocacy is included as a part of the planning team that devises the program, blocking may be implemented without the approval of the Review Committee.

But the exception is a narrow one. Because blocking is defined as both momentary and merely a deflection, it follows that any additional limitation of movement beyond momentary deflection, even when the person has agreed to a blocking program, is a restraint. A planned physical intervention may be similar in purpose and execution to blocking, but goes beyond mere deflection by turning the person or putting a person in a different position. Under those circumstances the intervention is a restraint.

Also, any blocking program, even one that is limited to momentary deflection, cannot be moderately intrusive if the person will not comply with its implementation, or is resistant to it. (See Section 7(B), "An individual's voluntary compliance in a moderately intrusive plan is essential.) This is so even if the person has a guardian who has given consent to the program. Such a program would need the approval of the Review Committee.

Although the regulations do not specifically require it, any program that uses blocking should also include a teaching element. Blocking is reactive: it deflects a blow and/or protects a person from self-abuse. A blocking program should also include a proactive aspect in the form of some type of teaching or positive reinforcement that seeks to reduce or eliminate the target behavior.

Blocking should not be confused with pre-emptive body positioning. For instance placing oneself strategically between two people who may be about to exchange blows is establishing a personal presence intended to keep the participants separated. As long as there is no physical contact, or if any physical contact is minor and incidental, it is not blocking. Of course in the right circumstances body positioning, for instance in the doorway of a bedroom, could also be a seclusion.

Although blocking is usually associated with hands and arms, the whole body can be used to block. In "whole body" blocking there is actual physical contact with the person, as the body is used with the intent to nudge or very gently push the person. Consistent with the requirements of Section 7(D)(1) this intentional use of the body to nudge or gently push a person must be reported as a restraint.

Blocking should also not be confused with hand-over-hand teaching techniques. Hand-over-hand is assistive in nature whereas blocking, as noted above, is reactive.

A **physical escort** occurs when staff, while touching the person, guides the person in a particular direction or to a particular place. There is no specific definition of

"physical escort" in the Regulations, but it follows, given the broad definition of "restraint" and the language of Section 2(3)(C), that if there is any resistance on the part of the client, the escort is prohibited unless it is either part of an approved plan or is an emergency intervention. Some gentle or soothing touching is allowable, as is supportive touching that protects a person from falling. But any use of force, however minimal, is restraint. For instance, helping a person out of a van by lending a hand for balance, even while verbally encouraging the person to get out, is a physical escort. However it is not a restraint because no force is used. Moving a resistive person to get the person out of the van is a physical escort that is a restraint. NAPPI and MANDT, before the latter changed its terminology to "accompany" describe both activities, drew this distinction by using the term "move" for actions to which there was resistance, and "escort", in which was no resistance.

Given the reference to "implied" limitations in Section 2(3)(C), quoted above, the actual touching of the person is not necessary to qualify as a prohibited intervention. Because limitation of the person's movement can be "implied", a behavior plan that has staff order a client "Go to your room" must be approved by the Review Committee. The regulations specifically define "**time out, exclusionary**" (ETO) as a voluntary response by the individual following a request by a service provider. ETO is a moderately intrusive procedure. **Nonexclusionary timeout**, a mildly intrusive procedure, also is specifically defined to be voluntary on the part of the client. Therefore it is very important for a Review Committee to examine the context of communications between staff and client to determine just how voluntary any withdrawal by the client may be.

At times certain words couched in terms of advice can become an order. For instance, the words "You may want to go to your room" may be nothing more than a benign suggestion, or they may really be an order. This distinction as to when "advice" or a "suggestion" is really an order has to be evaluated on a case by case basis, taking into account the intent of the staff in saying what is said, and whether what is said is understood by either the client or the staff to mean that there will be further consequences if the "advice" is not followed. If the words truly are intended only as advice, then there should be no consequences for failing to follow the advice. If the words are really an order masquerading as advice, then one or both of the participants know, or fear, as the case may be, that some further detrimental consequence will befall the client if the suggestion is not taken or the advice not followed.

Three other factors that should be considered in deciding whether "advice" or a "suggestion" is really an order are the relative physical sizes of the staff and the client, the amount and degree of power differential that exists between staff and the particular client, and the history of the client's reaction to similar words. Given the institutional histories of many persons with mental retardation, even a staff gesture that normally has no coercive intent, such as taking off glasses, can be a signal to a client that rough physical intervention is imminent. The members of any review team should inquire about and consider these factors before it approves any program in which the client is "asked" to move somewhere or do something after exhibiting target behavior.

The use of a symptom or trait of an individual to coerce the individual may also make a program that does not involve actually touching the person a severely intrusive program. For instance, if the target behavior is that the client will not get out of the van, and the client is tactile defensive and will not tolerate someone sitting next to her in the van, then a program in which staff goes into the van and sits next to her, moving as she moves, until she exits the van, is coercive in nature and must be reviewed by the Review Committee. Sitting next to a person and using her tactile defensiveness may be preferable to physically hauling the person out of the van, and thus would be a lesser restrictive alternative, but the element of coercion in that intervention makes it subject to review by the Review Committee.

If in the implementation of a program the words are scripted for staff, and staff is also trained to be sensitive to tone of voice and body language, potentially coercive elements can be removed from the program. For instance, "You are upset and you need a time out" or "You should go to your room" are quite different from "When I'm upset, I go to my room" or "Here is what I do when I get upset". Any statement that is presented in the form of an absolute is going to seem like an order, whereas any language that incorporates suggestions or advice becomes coercive only if the tone of voice or staff's body language make it so, or if there is some idiosyncratic reason related to the particular client that makes it so.

Graduated guidance is a procedure that combines physical touching, in the form of prompts, with the systematic fading of those prompts, so that the touching of the person is gradually reduced and then, assuming the procedure is having its desired effect, faded out completely. It is really nothing more than a teaching technique that involves touching. It may involve full contact with a particular body part of the client, usually the client's hands, as in the teaching of dental hygiene. It usually begins with hand-over-hand touching, and then fades over time to less actual touching, in which the staff provides only what the client actually needs in terms of physical prompts to complete the desired activity. This in turn can be further faded to the staff not actually touching the person at all, but "shadowing", keeping a small distance between the staff body part and the client's body part. Properly executed, graduated guidance should never have any element of coercion. If the person resists the guidance, the technique becomes a restraint.

The dividing line between the touching and teaching that is graduated guidance, and any touching and teaching that is attempted but which is sufficiently resisted so that the touching becomes a restraint, is a matter that that should be decided by the person's PCP team on an case-by-case basis. Graduated guidance should be carried out pursuant to a written plan that is part of the person centered plan, but it need not be subject to any additional scrutiny required by the regulations.

Other **teaching techniques** may have specific names such as the Life Space Interview or modeling. The Life Space Interview is a therapeutic, structured verbal interaction with a person in which staff attempt to teach coping skills in the wake of a behavioral incident. Modeling is teaching new skills, new behavior, or new expectations by way of the person observing the staff's example. Obviously teaching does not have to follow any specific prescribed course or technique. At its most fundamental level it may

simply be staff communicating in a constructive way with clients to impart information. Although some incidental touching may occur in the course of teaching, touching, except in graduated guidance, is not a necessary or integral part of the technique. Any touching that does occur should be no more than what might normally occur in any conversation between peers and associates. As with graduated guidance, if there is any element of coercion in the application of these teaching techniques, they no longer are being used properly and should not be classified as teaching techniques. If the teaching technique is one of the more formal and structured ones, such as a Life Space Interview, good practice suggests that it should be carried out pursuant to a written plan that is incorporated into the person's Person Centered Plan. But these techniques need not be further reviewed under the regulations.

In summary, not all touching is coercive, but coercion can occur even if there is not touching. Body language, facial expression, tone of voice, and the particular past experiences of the client can make a program that does not involve touching coercive in nature and thus subject to the approval of the Review Committee as a severely intrusive program. The members of the Review Committees have the right to ask probing questions about how, exactly, a program will be implemented and what the intent of staff is when the program is implemented. They may then tailor the degree of their review to what they perceive as the severity and intrusiveness of the program.

Richard A. Estabrook, Esq.
Chief Advocate December 20, 2004